

Wireless Telecommunications Consumer Protection Act



A Model State Statute



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**Wireless Telecommunications
Consumer Protection Act:
A Model State Statute**

by

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The Public Policy Institute, formed in 1985, is part of the Policy and Strategy Group at AARP. One of the missions of the Institute is to foster research and analysis on public policy issues of importance to mid-life and older Americans. This publication represents part of that effort.

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Foreword

The number of cellular or wireless telephone subscribers in the United States has grown substantially over the years, increasing from roughly 49 million in 1997 to 97 million in 2000 to almost 150 million currently. Many of these subscribers are age 50 and older. In fact, a recent AARP Public Policy Institute (PPI) report shows that consumers age 50 to 64 are about as likely as those age 18 to 49 to have wireless telephone service. Persons age 65-plus are less likely to subscribe, but for those who do, the use of wireless telephones is primarily for emergencies, making quality of service an especially important concern.

As more people subscribe to wireless phone service, and as subscribers come to rely more on their cell phones, the quality of service provided by wireless telecommunications carriers becomes a significant consumer issue. In this regard, recent research suggests that the more consumers use their cell phones, the less satisfied they are with their service. Among the highest volume users of cell phone service, 84 percent have experienced difficulties in making or receiving cell phone calls.² Within this group, 30 percent say they experience difficulties during at least half of all their cell phone calls.

Many wireless consumers may reasonably expect to maintain at least the same rights and protections they are entitled to as users of landline service. In reality, wireless service providers—unlike providers of landline telephone service, for whom states have traditionally established specific quality of service standards and monitored compliance—remain essentially free from any state oversight or minimum standards.

Without basic consumer protections, wireless service providers remain unaccountable for billing overcharges and poor customer service, and wireless users are subject to industry practices that significantly hinder their ability to make informed decisions, understand their bills, or change service providers. Some of these practices, such as requiring long-term contracts with substantial penalties for early termination, do not occur in any other comparable industry. Other practices, such as providing less than full and accurate disclosure of service coverage information, are particularly troublesome for cell phone users, who may depend on service for security in case of an emergency.

States have the opportunity and authority to promote high-quality wireless telecommunications service.³ This model state statute, the Wireless Telecommunications Consumer Protection Act (WTCPA), is designed to encourage informed choice and give consumers clear and enforceable rights in the wireless telecommunications market. Enacting the statute's provisions will establish an important framework to ensure high-quality wireless telephone service for the millions of Americans, including many older consumers, who increasingly rely on their cell phone for personal, business, and emergency communications.

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² Kim-Sung, Kellie, and Christopher A. Baker. *Understanding Consumer Concerns about the Quality of Wireless Telephone Service*. Data Digest 89. AARP Public Policy Institute, June 2003.

³ While federal statute explicitly prohibits states from regulating the rates charged by any wireless service provider, states retain the authority to regulate “other terms and conditions” of wireless service, which include customer billing information and practices, billing disputes, and other consumer protection matters.

Introduction

The introduction of cellular telephone service in 1982 marked the beginning of a revolution in the way individuals communicate. The popularity of wireless telecommunications services is a strong indicator of their value to the public.⁴ It is estimated that more than 145 million subscribers use wireless telephones in the United States, with 50 percent of U.S. households having at least one wireless telephone, and more than 30 percent of U.S. households having two or more phones.⁵

The U.S. Congress directed the Federal Communications Commission (FCC) to promote competition in wireless telecommunications markets.⁶ To further this end, new radio frequencies have been made available for wireless telecommunications providers, and new technologies have been promoted to use the radio frequencies more effectively. The FCC has been successful in increasing the number of providers of wireless telecommunications services in many areas of the United States⁷; however, even in major market areas, consumers are likely to have relatively few service providers from which to choose. Consumer choice is even more limited in mid-market urban areas and in rural areas. While the policy objective in wireless markets has been promotion of competition, industry practices, such as the use of long-term contracts and the lack of number portability, restrict consumer choice and impose costs on consumers when they try to switch providers. Limitations on customer choice constrain market forces and may disadvantage consumers in the marketplace.

Wireless Service Problems

The increasing popularity of wireless services has coincided with increasing service problems for consumers who use these largely unregulated services.⁸

⁴ Wireless telecommunications services include digital and analog cellular services, digital PCS services, specialized mobile radio services, and emerging wireless data communications services.

⁵ Estimates of wireless telephone subscription for year-end 2001 were compiled from multiple industry sources in the FCC's *Seventh Report in the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, released July 3, 2002. Figures quoted above rely on the FCC's report and more recent reports from Scarborough Research, Inc., Jupiter Research, Inc., and Cellular Online.

⁶ The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), amending the Communications Act of 1934 and codified at 47 U.S.C. § 332(c).

⁷ Throughout the 1980s and early 1990s, cellular telephony was provided under a federally mandated policy of duopoly, or two providers per market area. The FCC increased the number of potential wireless providers possible by licensing digital personal communication services (PCS) to compete against the cellular duopoly.

⁸ The Better Business Bureau reports that between 1998 and 2002, a period when wireless subscription increased by about 100 percent, the number of complaints it received regarding wireless telecommunications increased from 615 to 21,534; see "FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services." General Accounting Office, April 2003, pp. 26–27. Available at: <http://www.gao.gov/new.items/d03501.pdf>.

Some specific concerns regarding the business practices of wireless telecommunications providers and their potential consequences for consumers include:

- Consumers are unable to determine accurately the coverage areas offered by wireless telecommunications companies. In September 2002, the FCC eliminated the requirement that providers of cellular telephone service provide coverage maps.⁹ Even before this ruling, coverage maps provided by cellular and other providers of wireless telecommunications services did not necessarily provide accurate information regarding coverage areas.¹⁰ The inability to place a call from an area with a “coverage gap” poses a significant public safety risk. For example, carjackers in Los Angeles pursued and eventually shot a wireless telecommunications user who repeatedly tried to reach 911 in a “coverage gap” associated with her service provider.¹¹
- Wireless telecommunications providers have incentives to oversubscribe their services because there are no checks on service quality. Adding additional customers without expanding network capacity may improve revenues, but it places increased demands on carrier infrastructure, which negatively affects consumers. During peak calling periods, overwhelmed networks have difficulty meeting user demand, leading to blocked and dropped calls.¹² A recent survey of wireless users conducted by *Consumer Reports* magazine indicates that in the week before the survey, 10 percent of respondents experienced conditions where they could not get service, 14 percent experienced dropped calls, and 11 percent experienced poor call quality.¹³ Another survey conducted on behalf of the U.S. General Accounting Office (GAO) also indicates service quality problems. GAO estimates that 22 percent of wireless users were unable to complete 10 percent or more of their calls successfully.¹⁴ Consumers are still charged for calls that are dropped by the service provider, or may even be charged for not answering their calls quickly enough.¹⁵

⁹ *In the Matter of Year 2000 Biennial Regulatory Review—Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*. WT Docket No. 01-108. Second Report and Order, FCC 02-247, September 24, 2002, ¶4. While the FCC had required provision of coverage maps, it did not require that these maps reveal any information regarding signal quality.

¹⁰ PCS providers were never required to provide coverage maps to their subscribers. However, given the requirement on cellular providers, many PCS providers did provide coverage maps for competitive reasons. Absent the requirement on cellular providers, this competitive pressure may be reduced.

¹¹ See “WCA Says ‘Dead Zones’ Industry’s Achilles’ Heel.” *Wireless Week*, May 17, 1999. Available at: http://www.wirelessconsumers.org/HTMLs_PDFs/Images/WirelessWeek_com_dead%20zones.htm.

¹² See, for example, “Calls in Question: Why Are Wireless Networks Still Plagued by Dropped Signals, Bad Reception and ‘Dead Zones’?” *Wall Street Journal*, September 23, 2002. See also Letter from Senator Charles E. Schumer to FCC Chairman Michael Powell, November 24, 2002. Available at: http://schumer.senate.gov/SchumerWebsite/pressroom/press_releases/PR01333.html.

¹³ “Three Steps to Better Cellular.” *Consumer Reports*, February 2003, p. 16.

¹⁴ “FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services.” General Accounting Office, April 2003, p. 3. Available at: <http://www.gao.gov/new.items/d03501.pdf>.

¹⁵ AT&T Wireless recently began charging for calls that go unanswered for more than 30 seconds; see “Fees Hidden in Plain Sight, Companies Add to Bottom Line.” *New York Times*, December 28, 2002.

- Service plans lock consumers into long-term contracts (typically 12 or 24 months) and subject them to high fees for early termination. As a result, consumers who discover the seller's claims regarding service price, quality of service offered, or coverage area associated with a service plan are inaccurate may be faced with significant expenses to terminate service and pursue other alternatives. This type of restriction on consumer choice undermines competitive forces. The GAO survey reports that among wireless users who wanted to change providers but were subjected to an early termination fee, more than 70 percent said the early termination fees were important in their decision *not* to change providers.¹⁶ Consumers must be able to "vote with their feet" when discovering false claims from a service provider; otherwise the market will deliver inferior products at inflated prices.
- Billing problems have plagued consumers of wireless phone service.¹⁷ Advertised prices for service plans sometimes do not reflect the actual prices that eventually appear on consumer bills.¹⁸ Other problems include inaccurate billing, confusing billing formats, inability to obtain customer service, and limited dispute resolution procedures. Consumers are frequently required to waive their due process rights to obtain wireless telecommunications services.

A Need for State Action

The GAO recently recommended that the FCC include call quality in its annual report on the state of the wireless industry. The FCC has agreed in principle to this request.¹⁹ While this is a step in the right direction, additional measures need to be implemented to improve customer choice and service quality in wireless markets.

States can play an important role in protecting consumers, encouraging competition, and improving the service quality associated with wireless telecommunications services. There is no question that Section 332(c)(3)(A) of the Communications Act restricts the states' "authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service." However, the section goes on to indicate that "except that this paragraph shall not prohibit a State from regulating the other terms and conditions of

¹⁶ "FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services." General Accounting Office, April 2003, p. 46. Available at: <http://www.gao.gov/new.items/d03501.pdf>. The *Consumer Reports* survey also reported the chilling effect early termination fees have on customer choice; see "Three Steps to Better Cellular"

¹⁷ Billing and rates consistently represent the number one complaint regarding wireless services reported by consumers to the FCC; see, for example, "Report on Informal Consumer Inquiries and Complaints, Second Quarter Calendar Year 2002." Consumer and Governmental Affairs Bureau, Federal Communication Commission. October 15, 2002. Available at: <http://www.fcc.gov/cgb/quarter/2002qtr2.pdf>.

¹⁸ A recent analysis conducted by the *Wall Street Journal* indicates that the actual service charges appearing on consumer bills for various rate plans range between 24 percent and 28 percent higher than the advertised rate; see "Cellphone Bills Are Hit By New Round of Fees." *Wall Street Journal*, May 1, 2003.

¹⁹ The FCC has also indicated to GAO that it may have difficulties in complying with the GAO's request; see "FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services." General Accounting Office, April 2003, p. 4.

commercial mobile services.”²⁰ The legislative history is quite specific with regard to the powers that remain with the states: “It is the intent of the Committee that the states still would be able to regulate the terms and conditions of these services. By ‘terms and conditions,’ the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters ...”²¹ The FCC has also acknowledged that the wireless industry is not exempt from neutral application of state contractual or consumer fraud laws.²²

The United States Court of Appeals, 5th Circuit, agreed with the FCC’s interpretation of Section 332(c)(3)(A): “States: (1) in general can never regulate rates and entry requirements for CMRS²³ providers; (2) are free to regulate all other terms and conditions for CMRS providers; (3) may regulate CMRS rates and entry requirements when they have made a substitutability finding in connection with universal service programs; and (4) may also regulate CMRS rates if they petition the FCC and meet certain statutory requirements, including either substitutability or unjust market rates.”²⁴

The Model Act

The Model Act has been designed to promote informed choice and consumer protection in wireless markets. The starting point in developing the Model Act was an analysis of the terms of purchase offered by wireless telecommunications providers. Promotional materials and the terms and conditions published by wireless telecommunications providers during the first half of 2003 were examined.²⁵ Specific items compared across providers included termination fees imposed for term contracts, trial periods associated with term contracts, practices regarding notice of changes, practices regarding dispute of charges and dispute resolution procedures, policies addressing liability in the event of theft, statements regarding availability and accuracy of coverage maps, and practices regarding call billing. This analysis revealed significant variation in these important areas. Analysis also included a review of billing formats from wireless carriers, sample wireless bills produced by the FCC, and bills from other utilities. Practices and regulatory requirements associated with competitive

²⁰ 47 U.S.C. 332(c)(3)(A).

²¹ Ibid.

²² *In the Matter of Wireless Consumer Alliance, Inc. Petition for a Declaratory Ruling Concerning Whether the Provisions of the Communications Act of 1934, as Amended, or the Jurisdiction of the Federal Communications Commission Thereunder, Serve to Preempt State Courts from Awarding Monetary Relief Against Commercial Mobile Radio Service (CMRS) Providers (a) for Violating State Consumer Protection Laws Prohibiting False Advertising and Other Fraudulent business Practices, and/or (b) in the Context of Contractual Disputes and Tort Actions Adjudicated Under State Contract and Tort Laws*. WT Docket No. 99-263. Memorandum Opinion and Order. FCC 00-292, August 14, 2000, ¶ 9. See also, *In Re Southwestern Bell Mobile Systems, Inc.* FCC No. 99-356. November 24, 1999. (¶ 10).

²³ CMRS stands for “commercial mobile radio services.”

²⁴ *Texas Office of Public Utilities Counsel, et al. v. FCC*, 183 F. 3d 393, 432 (5th Cir. 1999).

²⁵ Terms and conditions for the following wireless providers were reviewed: AT&T Wireless, Cingular Wireless, Verizon Wireless, Sprint PCS, Nextel, T-Mobile, ALLTEL, US Cellular, Qwest Wireless, MetroPCS, and Pac Plus. The first nine providers provide wireless service to about two-thirds of wireless subscribers in the United States.

natural gas and electric supply were examined. While these are different industries, the contract-based nature of gas and electric provision and the ability of customers to choose from rival providers parallel aspects of wireless telecommunications service provision. Emerging wireless consumer protection legislation and rules were also examined.²⁶

Where possible, the best practices already evident in the wireless marketplace have been employed as standards in the Model Act. However, in some cases the best practices evident in the marketplace do not provide balance between consumers and providers of wireless services. In these cases the Model Act includes provisions that are tailored to the unique features of the wireless marketplace or that rely on best practices evident from other industries.

The Model Act is divided into 12 sections. Following the introductory sections, which state the purpose of, and define terms used in, the Model Act, the remaining sections address specific aspects of the wireless marketplace and provide a framework for promoting choice and protecting consumers in the wireless marketplace. Section 3 of the Model Act identifies provisions that promote informed consumer choice and provide balance in the practices of locking consumers into long-term contracts. Sections 4 and 5 address billing and payment practices. Section 6 addresses customer notification practices and changes to service. Sections 7 and 8 identify procedures to be followed with regard to service termination and billing disputes. Section 9 addresses wireless provider marketing practices. Section 10 addresses provision of prepaid wireless services. Section 11 addresses the responsibilities of the state public service commission associated with implementation of the provisions of the Model Act. Section 12 is a “Savings Clause” recognizing that all states have a well-developed set of consumer protection, tort, and contract laws and that nothing in the Act is intended to override any of these laws.

²⁶ Senator Charles Schumer has identified specific wireless consumer issues in a “Cell Phone User Bill of Rights”; see: http://www.senate.gov/~schumer/SchumerWebsite/pressroom/press_releases/PR01504.pf.html. The California Public Utilities Commission has published draft rules that are being considered in an ongoing proceeding. As would be expected with rules developed to meet the specific needs of an individual state, the proposed California rules generally provide more detail than similar sections of the Model Act. As the Model Act envisions a rule-making process in the adopting state, additional detail may be added by the state public service commissions involved with implementation of the provisions of the Model Act.

Section 1: Title, Purposes

- (a) This Act shall be known as the Wireless Telecommunications Consumer Protection Act.
- (b) The Legislature finds that wireless telecommunications services have been widely adopted in the state and are currently unregulated. The Legislature finds that providers of wireless telecommunications services restrict consumer choice and fail to provide sufficient information for consumers to make informed choices. Specifically, the Legislature finds that:
- (1) Disclosure of a wireless provider's coverage area before customer purchase of service is currently at the discretion of the service provider, who may not have incentive to accurately or fully disclose coverage areas and gaps in coverage.
 - (2) Undisclosed coverage gaps in wireless telecommunications services threaten public safety as consumers are not able to rely on their communication equipment to place emergency calls.
 - (3) Wireless telecommunications providers require customers to make long-term commitments, impose high fees for early termination, and bundle wireless telephones with calling plans, all practices that restrict consumer choice and competition.
 - (4) Billing practices of wireless telecommunications providers are often confusing and may misidentify the nature of charges.
 - (5) Consumers of wireless telecommunications services require accurate information regarding the quality of service associated with various wireless telecommunications providers to make informed decisions in the wireless marketplace.
- (c) The purpose of this Act is to promote informed choice among consumers of wireless telecommunications services and thereby promote competition in the provision of wireless telecommunications services. This Act is to be construed as a consumer protection statute for all purposes.

Commentary: Section 1

Section I establishes the framework for the substantive provisions of the Model Act. The premise of the Model Act is that (1) wireless telecommunications providers offer a service that has become widely adopted by the public; (2) wireless telecommunications providers currently operate in an unregulated environment; (3) increasing reliance on wireless service, combined with the lack of public oversight, raises public safety concerns; (4) the practices associated with the sales and marketing of wireless telecommunications service, as well as limited information on service quality, reduce consumers' ability to make informed choices; and (5) restriction of consumer choice by wireless telecommunications firms prevents market forces from delivering high-quality services.

Section 2: Definitions

Commission refers to the state Public Service Commission.

Connection means that the call placed by a wireless telecommunications service subscriber has been answered by the called party, or the wireless telecommunications service subscriber has answered a call placed by another individual. A connection does not include non-use events, such as ringing and busy signals.

Coverage areas are geographic areas where a wireless telecommunications provider claims it has network facilities allowing consumers to make and receive voice calls or use other wireless telecommunications services.

Coverage gaps are geographic areas in which wireless telecommunications services subscribers cannot send or receive voice calls or use other wireless telecommunications services offered by the wireless telecommunications provider.

Coverage maps show coverage areas and coverage gaps associated with services offered by wireless telecommunications providers within the state.

Decibel relative to one milliwatt (dBm) is a measure of signal strength.

First bill is the first monthly bill for services received by the subscriber following service activation.

Home coverage area is an area designated by a wireless telecommunications provider where subscribers do not incur roaming charges.

Package minutes (possibly referred to as “free minutes,” “bonus minutes,” “night and weekend minutes,” or “anytime minutes” in service plan descriptions) are the monthly minutes of use specified by a wireless telecommunications service plan for which the subscriber does not incur use fees in addition to the monthly charge.

Prepaid wireless services are wireless telecommunications services offered by a wireless telecommunications provider that require the customer to purchase use for a prepaid wireless phone in advance.

Roaming occurs when a wireless telecommunications service subscriber makes or receives voice calls or uses other wireless telecommunications services in an area outside of the home coverage area.

Roaming charges are airtime and long-distance charges for voice calls or other wireless telecommunications services outside of the home coverage area.

Subscriber transfers reflect a process where subscribers are transferred from one wireless telecommunications provider to another by agreement of the wireless telecommunications providers.

Wireless Enhanced 911 (E911) is a 911 service that identifies the location of the individual placing the 911 emergency call via wireless telecommunications equipment.

Wireless telecommunications equipment is equipment needed by the subscriber to use wireless telecommunications services.

Wireless telecommunications services are the services offered for a fee to the public by a wireless telecommunications provider.

Wireless telecommunications provider is (a) any carrier of commercial mobile radio service as defined in 47 U.S.C. 153(27) and 332(d), as such sections existed on the effective date of this Act, and 47 C.F.R. 20.9, as such section existed on the effective date of this Act, or (b) any cellular licensee, personal communications licensee, and specialized mobile radio carrier defined in 47 C.F.R. 20.18, as such section existed on the effective date of this Act. Wireless telecommunications providers include resellers of wireless telecommunications services. For purposes other than oversight of market entry, rates charged, or rates-of-return earned, wireless telecommunications providers are classified as public utilities under the provisions of this Act.

Commentary: Section 2

One of the definitions contained in Section 2, decibels relative to one milliwatt, is a technical term that requires further explanation. To generate informative coverage maps, the signal strength of wireless telecommunications services must be identified. Decibels relative to one milliwatt (dBm) provides a basis for continuous measurement of signal strength. The radio frequencies used to provide wireless telecommunications service are subject to interference from natural phenomena, such as electrical storms, terrain, and foliage, and man-made objects such as buildings. To successfully construct networks, wireless telecommunications providers recognize that threshold levels of signal strength must be achieved for services to perform adequately. As a result, when designing a wireless telecommunications network, signal strength thresholds used by wireless telecommunications providers are influenced by the characteristics of the serving area. For example, in an “outside” calling environment, high-quality voice service may result from a signal strength of -92 dBm. However, that same signal strength, when used in a moving vehicle or inside a building, could result in poor service quality. To provide a signal that would provide good service quality in an inside a building or in a moving vehicle, a stronger signal strength (e.g., -72 dBm) may be required.²⁷

The Model Act requires that the Commission establish appropriate signal strength thresholds for home coverage areas that will allow consumers to compare the call quality of wireless telecommunications services offered by alternative wireless telecommunications providers.

²⁷ dBm is calculated using logarithms to the base 10. As a result, given the general range of signal strengths associated with provision of wireless telecommunications services, measured in milliwatts, larger negative numbers represent weaker signal levels.

Section 3: Subscriber Verification of Wireless Telecommunications Provider Claims

(a) All providers of wireless telecommunications services shall publish verified coverage maps showing the coverage area associated with all statewide home calling areas and each calling plan. Wireless telecommunications providers shall make copies of verified coverage maps available to prospective and existing subscribers. Coverage maps should be prepared in compliance with Commission rules and submitted to the Commission for verification and approval no less than annually.

(b) Wireless telecommunications providers shall publish rate information in a clear and understandable format. All terms and conditions of rate plans should be printed in typeface no smaller than 12 point. The number of “package” minutes of use and the cost of additional minutes of use associated with a service plan should be clearly stated. Any restrictions on the use of package minutes should be clearly identified, such as whether these minutes only apply to specific hours of the day. Prices, rates, or term contracts associated with wireless telecommunications services shall include a disclosure of any geographic limitation to the advertised price, rate, or term contract. Rate information should include a good faith estimate of the total monthly cost of the service, which includes any additional surcharges, call setup charges, fees, or taxes applicable to the prices, rates, or term contracts. Rate information should clearly identify how long-distance calling is treated. Conditions under which roaming charges apply should be clearly identified. It should be made clear to subscribers whether or how their package minutes apply to roaming. Rate information for additional services, such as directory assistance, should be clearly identified. Termination and reactivation fees should be clearly stated.

(c) For a period of up to 20 days after the date of the first bill for monthly service following service activation, the wireless telecommunications service subscriber shall be allowed, without penalty, to cancel the contract with the wireless telecommunications provider and return for a full refund any wireless telecommunications equipment acquired from the wireless telecommunications provider, or from its agents or authorized dealers. The subscriber remains responsible for any use charges incurred before termination. Refunds for equipment are contingent upon the return of all wireless equipment in proper working order.

Commentary: Section 3

Section 3 of the Model Act encourages practices to promote informed choice and competitive forces in the wireless telecommunications market.

(a) Provision of coverage maps. Wireless telecommunications providers currently are not required to provide coverage maps to their subscribers. Providers that do supply coverage maps are under no obligation to accurately represent the true extent of coverage, or the existence of coverage gaps, i.e., areas within an identified calling area where service does not exist. Under the provisions of the Model Act, coverage maps will identify areas that achieve signal strength thresholds associated with good service quality, given the characteristics of the home coverage area. The Commission, as part of a rule-making process discussed in

Section 11, will identify the appropriate signal strength thresholds for home coverage areas in the state and verify the accuracy of the maps.

(b) Rate information. Consumers are confronted with complex use restrictions for wireless services such as a specified level of use minutes that do not incur per-minute charges (package minutes), peak and off-peak billed minutes, and roaming charges. The Model Act requires wireless telecommunications providers to provide clear statements of the rate information associated with their plans so consumers can make comparisons among plans and service providers. Since wireless telecommunications providers create rate plans for geographically defined areas, this section also requires clear statements of the geographic restrictions associated with wireless services and the existence of surcharges or additional fees.

(c) Cancellation of service. The wireless industry has distinguished itself by requiring long-term commitments, ranging from one to two years. This industry practice locks customers into a particular provider and necessarily limits customer choice and competitive forces. The cancellation of service provision allows subscribers to verify the claims associated with wireless telecommunications providers' coverage, service quality, and billing accuracy. Subscribers are allowed to terminate service without penalty for a period up to 20 days after receipt of their first bill for monthly service following service activation. Current practices vary widely, with some companies offering a limited trial period, typically too short to allow subscribers to receive their first bill. To reasonably assess a wireless product, subscribers must have something to assess. Subscribers need to experience service in a variety of settings associated with their use patterns to know if they are satisfied with service quality. Subscribers must receive a bill to verify representations regarding calling plan costs. The specified penalty-free trial period allows this to occur. Wireless telecommunications services are frequently bundled with equipment, such as telephone handsets or other devices, that is used in conjunction with the service. Thus, the Model Act also specifies that consumers have the opportunity to return equipment associated with the service offering without penalty.

Section 4: Billing

- (a) Use charges for communication using wireless telecommunications services shall not begin until a connection between the called and calling party has been established.
- (b) Any reductions in the number of a subscriber's "package minutes" associated with wireless telecommunications services shall not begin until a connection between the called and calling party has been established.
- (c) Wireless telecommunications bills shall be clearly organized and shall only contain charges for products and services authorized by the subscriber.
- (d) Charges listed on wireless telecommunications service bills must be accompanied by clear, concise, plain-language descriptions of the products and services for which the charges were imposed. The descriptions must be sufficiently clear and specific for subscribers to determine whether the services for which they are being billed are those they have requested and received, and that the charges shown for those services conform to their understanding of what the rates would be.
- (e) Each wireless telecommunications provider shall establish and maintain a toll-free customer service telephone number with access to a live operator, through which consumers may lodge relevant complaints and through which the following information may be obtained by consumers:
 - (1) All rates, surcharges, and fees.
 - (2) The balance of minutes in the consumer's account, if applicable.
 - (3) The process to dispute charges.
- (f) Subscribers shall receive visual and audio notification that they are in a roaming area before connection. All roaming charges shall be itemized on bills within 60 days of the call being placed. Roaming charges must identify the date and originating location of the call.
- (g) All taxes and fees the government requires wireless providers to collect from subscribers shall be listed in a separate section of the wireless telecommunications service bill, entitled "Taxes," and all such charges shall be itemized separately. This section of the bill shall not include any charges that the wireless telecommunications provider has discretion to recover from subscribers. Wireless telecommunications providers shall not label or describe charges in any other section of the bill in a way that could mislead subscribers to believe that the government requires the wireless telecommunications provider to collect those charges.
- (h) Charges associated with the use of wireless telecommunications equipment and services unauthorized by the subscriber due to loss or theft shall not be the liability of the subscriber if the loss or theft is reported promptly to the wireless telecommunications provider. This provision applies to all wireless telecommunications services, including prepaid wireless services.

(i) Bills for wireless telecommunications services shall, at a minimum, prominently display the following information in 12-point type or greater: (1) billing provider's name; (2) period of service covered by the bill; (3) payment due date; (4) late payment charge (if applicable) and date after which it may be applied; (5) where and how to pay; and (6) the provider's toll-free number for billing inquiries and disputes, along with an address to which the subscriber may send a billing inquiry or complaint in writing. Every bill shall be in a format consistent with Commission requirements regarding utility bills, including requirements regarding provision in foreign languages. If a subscriber has arranged with the wireless telecommunications provider to access the wireless telecommunications service bill only by e-mail or the Internet rather than by regular mail, the provider should provide information regarding how quickly online payments are posted to the subscriber's account. In the case of electronic billing, the provider shall also provide e-mail or Web site addresses for billing inquiries and complaints.

(j) In addition to the billing requirements above, each bill shall include the following statement:

If you have a billing or service question or a complaint, you should contact us to try to resolve the matter. If we are not able to resolve it to your satisfaction, you may contact the State Public Service Commission at:

800-XXX-XXXX

or the Federal Communications Commission at:

888-CALL-FCC

Commentary: Section 4

Nearly 75 percent of wireless telecommunications complaints received by the FCC in a recent quarter were associated with billing practices and rates charged by wireless telecommunications providers.²⁸ These complaints addressed a wide range of subscriber concerns, including airtime charges, line items associated with surcharges and taxes, and recurring monthly charges. Section 4 of the Model Act establishes a framework for billing that will reduce subscriber confusion and require clearly organized and understandable subscriber bills. The billing practices described in Section 4 reflect a combination of best practices in the wireless industry and those associated with other utilities. Section 4 also provides additional incentives for wireless telecommunications providers to offer high-quality services. Current practices may result in subscribers being billed from the moment they hit the "send" button on their phone, regardless of whether a connection is established. The Model Act uses the observed industry best practices as the billing standard to prevent wireless telecommunications providers from charging for nonuse events such as ringing and busy signals.

²⁸ Quarterly Report on Informal Consumer Complaints and Inquiries Received, October 15, 2002. Available at: <http://www.fcc.gov/cgb/quarter/2002qtr2.pdf>.

The Model Act also specifies that subscribers should receive notification before they incur roaming charges. Even with the availability of accurate coverage maps, subscribers will not necessarily be aware of what charges the network will impose when placing a call from a particular location. Knowledge of roaming conditions is critical because roaming charges are frequently much higher than typical use charges.

In case customers are not aware of appropriate channels for lodging complaints against wireless telecommunications service providers,²⁹ the Model Act requires publication of public utility commission and FCC contact information.

Section 5: Payment Grace Periods, Prorating, and Backbilling

- (a) The payment-due date on a subscriber's bill shall be not less than 20 days after the billing date. A wireless telecommunications provider shall credit payments effective on the business day payments are received by the provider or its agent. A bill becomes overdue and delinquent when the provider or its agent does not receive payment by the payment-due date.
- (b) Wireless telecommunications providers shall prorate charges for service for partial months and may do so using a 30-day month for prorating in lieu of calendar months.
- (c) Bills must be based on the rates in effect at the time the service was used. Any delays or lags in billing must not result in a higher total charge than if the use had been posted to the account in the same billing cycle in which the service was used.

Commentary: Section 5

Section 5 complements Section 4 by requiring wireless telecommunications providers to conform to reasonable practices that have been applied in other industries. Currently, wireless telecommunications providers may impose late fees without clearly specifying in agreements the permissible payment period. The payment-due date standard uses a 20-day period, which is an observed practice among some wireless providers. It is also the standard that the "New York State Retail Access Business, Common Utility Document of Business Practices for Implementing Competition in Electric & Natural Gas Markets"³⁰ uses. The practices for prorating service charges and application of charges consistent with the time the charges were incurred are standards used in the proposed California telecommunications protection rules.

²⁹ The GAO survey reports that while 19 percent of customers had complained about service quality to their wireless provider, only 1 percent had complained about quality to any other entity, such as the FCC or state regulatory commission. This may indicate low awareness of these alternatives.

³⁰ Available at: <http://www.dps.state.ny.us/6-21ubp.pdf>.

Section 6: Rate Changes, Contract Changes, Transfers, Withdrawals, and Notices

(a) Subscribers have the right to terminate service, without penalty, within 30 days of receipt of notice of changes that result in higher rates or more restrictive terms or conditions. The notice of any change in service, including, but not limited to, those that result in higher rates or more restrictive terms and conditions, shall inform subscribers of their right to terminate and of the steps required to terminate their service. The subscriber notice shall describe the current and proposed rates, terms, or conditions, or other changes in service, as appropriate. The notice must also describe the impact of the change in dollar and percentage terms, as appropriate. If the subscriber chooses to terminate service after receiving notification that changes in the plan that result in higher rates or more restrictive terms and conditions, the wireless telecommunications provider shall refund the purchase price of the subscriber's handset.

(b) A wireless telecommunications provider shall notify each affected subscriber at least 30 days in advance whenever it plans a subscriber transfer, as defined. The notice shall identify the transferee; describe any changes in rates, charges, terms, or conditions of service; state that subscribers have the right to terminate their contract, without penalty, for a period of 30 days after receiving notice of intent to be transferred; and provide a toll-free telephone number for subscribers' questions.

(c) A wireless telecommunications provider shall notify each affected subscriber at least 30 days in advance if it intends to cease offering service.

(d) Notices required in these Rules shall be provided to the subscriber in writing by one or more of the following methods: bill inserts that are clearly identified as notices, notices printed on bills in a section marked "notices" and that contain no other information, or separate notices sent by first-class mail. In each case, an electronic notice may be substituted when the subscriber has agreed to receive notice in that manner. Notice by first-class mail is complete when the document is deposited in the mail, and electronic notice is complete upon successful transmission. Every notice in whatever form shall be legible and the equivalent of 12-point type or larger and shall be in a format consistent with Commission requirements regarding utility notices, including requirements regarding provision in foreign languages.

(e) Contracts periods shall not be extended without proper notification and subscriber authorization.

Commentary: Section 6

Section 6 addresses notification requirements. Currently, wireless telecommunications providers vary widely with regard to subscriber notification provisions addressing changes in prices and other terms and conditions. The notification terms identified in the Model Act are consistent with best practices observed in the industry. Given that in most cases subscribers have committed to a long-term contract, they must have the ability to terminate that contract if the wireless telecommunications service provider raises rates or otherwise restricts the

terms of the contract in a manner that is unfavorable to the consumer; otherwise contracts could become vehicles for bait and switch tactics.

A wireless telecommunications provider may sell or exchange geographic coverage areas with another wireless telecommunications provider. However, it appears that wireless providers do not offer subscribers any additional protections when a subscriber transfer occurs. The Model Act requires that subscribers be notified of impending transfer to another wireless telecommunications provider and the impact of the transfer on rates and conditions of service. The Model Act also gives subscribers the option to terminate their contract, without penalty, with the new wireless telecommunications provider for a period of 15 days after receiving notice of an impending transfer. Notification of transfer of customers has emerged as an issue in natural gas and electric utility “choice” programs where a competitive supplier is selected by the consumer to provide gas or electricity. Practices vary from state to state where these programs have been implemented. In New York, 15-day notice is required when suppliers swap contracts (that do not involve new terms for the customers).

The Model Act also requires wireless telecommunications service providers to notify subscribers if it intends to cease offering service so that subscribers can seek other service providers without service interruption. Unlike the contractually based delivery of services in natural gas and electric choice programs, which have provider of last resort provisions to ensure service is not interrupted, wireless consumers are on their own if their service provider exits the market. Under natural gas and electric choice programs, notice to customers of a provider leaving the market is required even though there is no danger of service interruption (in New York, for example, 15-day notice is required). The Model Act’s notification provision offer baseline service interruption protection to consumers who rely on wireless services. The Model Act specifies methods for providing subscribers notice of all of the changes addressed in this section that are based on the proposed California Telecommunications Consumer Protection Rules.

Section 7: Service Termination

(a) Wireless telecommunications providers shall provide notices in writing to subscribers not less than 10 calendar days before terminating service for nonpayment of overdue bills. Each termination notice shall include all of the following:

- (1) The wireless telecommunications provider’s name.
- (2) The name, address, and telephone number associated with the delinquent subscriber account.
- (3) Information sufficient for the subscriber to identify what service(s) are to be terminated and the delinquent amount(s).
- (4) The date by which payment, or arrangement for payment, must be made to avoid termination.

(5) A toll-free telephone number to reach a wireless telecommunications provider's service representative who can provide subscriber assistance.

(6) The telephone number of the state Public Service Commission to which the subscriber may direct inquiries.

(b) These notice and disconnection requirements do not apply when the subscriber's acts or omissions demonstrate an intention to defraud the wireless telecommunications provider or threaten the integrity or security of the provider's operations or facilities.

(c) When a subscriber is offered and agrees to an alternative payment plan, the wireless telecommunications provider must provide to the subscriber confirmation in writing of the terms, including any termination or reactivation fees. An electronic written confirmation may be substituted when the subscriber has agreed to receive confirmation in that manner.

Commentary: Section 7

Section 7 of the Model Act incorporates notification procedures for service termination associated with overdue bills. A review of the service terms of wireless service providers indicates that carriers generally do not include policies for notification before termination for nonpayment. However, some wireless carriers do indicate that, should service be terminated for nonpayment, additional fees will be imposed to reactivate service, in addition to the contract's early termination fees. While rules vary from state to state regarding the length of time required for notification before utility service termination (e.g., Indiana requires written notification 14 days in advance, New Jersey requires written notification 10 days before termination, West Virginia requires written notification 10 days before, and personal contact 24 hours before disconnection), notification for discontinuance of utility service is a standard practice. The procedures contained in Section 7 provide an opportunity for consumers to resolve payment issues without service interruption and the imposition of additional fees.

Section 8: Billing Disputes

(a) In the case of a billing dispute between a subscriber and a wireless telecommunications provider, the subscriber shall notify the wireless telecommunications provider within 60 days of receipt of the bill of the disputed charges and shall pay undisputed charges. The provider shall investigate the charge(s) in question and shall reach a determination and communicate that determination to the subscriber within 30 days of notification by the subscriber.

(b) A wireless telecommunications provider may not disconnect service to a subscriber within seven calendar days after the date the provider notifies the subscriber in writing of the results of its investigation. In no event shall the provider disconnect service before the due date shown on the bill.

(c) Wireless telecommunications providers shall not limit by contract the right of subscribers to bring complaints to the Commission, or the rights and remedies available to them by law, including class actions, in any state or federal court or agency of competent jurisdiction. Nor shall wireless telecommunications providers by contract hold subscribers liable for provider legal costs resulting from complaints before the Commission, the courts, or another agency.

Commentary: Section 8

Section 8 of the Model Act addresses procedures to resolve billing disputes. If wireless telecommunications providers do specify the ability of consumers to dispute charges at all, they typically require the subscriber to dispute charges in writing within a specified period, usually 60 days, and pay all outstanding balances to avoid service disconnection. Identified practices do not specify any deadline for the provider to provide the results of the investigation to the customer. While the Model Act specifies that consumers do not need to pay the disputed portion of the bill, the 60-day notification period specified in the Model Act would likely result in instances where consumers were disputing charges they had already paid. In cases where the carrier has not been paid the disputed charges, the carrier has every incentive to respond quickly to the subscriber. However, if the subscriber has already paid the bill, the incentive to respond is lessened. Thus, Section 8 also requires wireless telecommunications providers to respond to subscribers regarding disputed charges within a 30-day period, a response period suggested by the California proposed telecommunications consumer protection rules.³¹ Section 8 also ensures consumer rights to due process by preventing wireless telecommunications providers from limiting dispute resolution to binding arbitration, or preventing the consumer from entering into class action suits. Telecommunications providers' service agreements frequently prohibit entry into class action suits and mandate binding arbitration. While arbitration may be the preferred route for both consumers and service providers in some cases, outright prohibition of consumers joining class action suits, or seeking assistance from other legal bodies, such as the state public utility commission or state or federal courts, is an inappropriate restriction of due process. Consumers of regulated utility services, or unregulated good and services, are not consistently required to waive due process rights to make purchases.

Section 9: Marketing Practices

(a) Any agreement or contract the consumer or subscriber may execute shall be a separate document from marketing materials used to promote wireless telecommunications products or services and shall be unambiguous, legible, and in the equivalent of 12-point type or larger. Rates provided in agreements or contracts should include a good faith estimate of the total monthly cost of a plan, including taxes, surcharges, and other fees that will appear on the customer's bill. The terms and conditions specified in the contract regarding prices, terms of use, package minutes, and nongovernment charges are binding on the provider during the

³¹ *Rules Governing Telecommunications Consumer Protection*. Public Utilities Commission of the State of California, Rule 11, July 24, 2003.

term of the plan. Any changes to these terms and conditions that are not accepted by the subscriber under the conditions specified in Section 6(a) of this Act shall not be binding on the subscriber.

(b) Agreements, contracts, bills, and notices shall be available in each language used by the provider in solicitations directed at consumers or required by the Commission.

(c) Solicitations, including advertising and other marketing materials for specific services or plans, shall include clear, conspicuous, and accurate disclosure of applicable rates, terms, and conditions for each service offered in the solicitation.

(d) When a solicitation inadvertently presents an incorrect rate, term, or condition, the wireless telecommunications provider must be proactive and correct the error as soon as it is discovered to avoid a presumption of having been deceptive. The correction effort should be commensurate with the solicitation's distribution, for example, in a mass-market advertisement, the provider would be expected to distribute promptly and publicly a correction designed to reach essentially the same target audience as the original solicitation; in a more narrowly focused solicitation, the correction may be more focused.

Commentary: Section 9

Section 9 of the Model Act addresses wireless carriers' marketing practices, which vary widely. Marketing practices associated with other contract-based services, such as natural gas and electric choice programs, have marketing and contract standards imposed by regulatory commissions. For example, the New Jersey natural gas choice program requires that consumers be told, both in advertising and in contracts, the price per kilowatt (kWh) or per therm over the term of the contract, projected savings (excluding state-mandated discounts), and the period of time for which the price is valid. New Jersey contracts must include a complete list of fees, including contract termination penalties, late fees, and interest charges, and must specify the amount and the circumstances for which they can be imposed. The Ohio natural gas choice program requires that rival suppliers furnish the consumer with understandable, written information about gas price, payment terms, and other contract conditions. Standards established under Section 9 ensure that marketing practices promote informed choice. Promotional materials are required to clearly state prices, terms, and conditions associated with wireless services. Contracts or agreements are required to provide a good faith estimate of the monthly cost of the service that will appear on the customer's bill, including taxes, surcharges, and other fees the provider collects. Following the California Commission's proposed rules governing telecommunications providers, wireless telecommunications providers are required to promptly correct erroneous information regarding rates, terms, and conditions of service.

Section 10: Prepaid Wireless Services

The following standards and requirements for consumer disclosure and services shall apply with respect to the sale of prepaid wireless telecommunications services.

(a) The sale of prepaid wireless telecommunications services shall include a disclosure of any geographic limitation on the advertised price, rate, or unit value as well as a disclosure of any additional surcharges, call setup charges, or fees applicable to the advertised price, rate, or unit value.

(b) The following information shall be printed legibly on the prepaid wireless card (and/or its packaging) or other media associated with purchasing wireless minutes or units associated with prepaid service use:

- (1) The name of the wireless telecommunications provider.
- (2) A toll-free customer service number.
- (3) The expiration date or policy, if applicable.
- (4) The minimum charge per call and any surcharges or fees, including monthly fees, per-call access fees, or surcharges for the first minute of use, that may be applicable to the use of the prepaid wireless card or prepaid wireless calling services.
- (5) Whether there are additional or different prices, rates, or unit values applicable to international use of the prepaid services.
- (6) The definition of the term, “unit,” if applicable.
- (7) The recharge policy, if any.
- (8) The expiration policy, if any.

(c) Each wireless telecommunications provider that offers prepaid services shall establish and maintain a toll-free customer service telephone number through which consumers may lodge relevant complaints and through which consumers may obtain the following information:

- (1) All rates, surcharges, and fees.
- (2) The provider’s recharge, refund, and expiration policies.
- (3) The balance of use in the consumer’s account, if applicable.

(d) Each wireless telecommunications provider that offers prepaid calling services shall provide a refund to any purchaser of prepaid calling services if the associated network services fail to operate as represented by the wireless telecommunications provider. The refund shall be in an amount not less than the value remaining on the card or other device

associated with purchasing prepaid minutes or units and shall be provided to the consumer within 60 days from the date of receipt of notification from the consumer that the card has failed to operate in a manner consistent with the representations of the provider.

(e) Each wireless telecommunications provider that offers prepaid services shall provide coverage maps in accordance with the provisions of Section 3(a) of this Act. For providers of prepaid services who use the networks of other providers to offer their services, use of maps available from the underlying facilities-based wireless telecommunications provider is permissible.

Commentary: Section 10

Section 10 of the Model Act addresses prepaid wireless services. Prepaid wireless services are offered by major wireless telecommunications providers but are also available from other providers that typically do not own their networks, but, instead, resell capacity available from facilities-based providers. These plans typically require the purchase of a phone to activate service and then require additional purchases of prepaid minutes to use the service, typically using a prepaid wireless calling card. Because prepaid services do not require a contract, they offer consumers more flexibility. However, consumers need accurate information about the terms and conditions of use associated with initiation of service and subsequent purchases of prepaid minutes. It is important to note that prepaid services may be purchased by minors under age 18 of age, a practice that is typically limited by wireless telecommunications providers offering term or month-to-month “postpaid” wireless services. The availability of these services to minors requires clear statements of terms and conditions associated with prepaid plans. The provisions in Section 10 of the Model Act ensure that clear information is provided to consumers, that consumers have recourse to refunds if the service does not perform as represented by the wireless telecommunications provider, and that a minimum level of customer service is available.

Section 11: Responsibilities of the Commission

(a) Commission authority. The scope of Commission authority does not extend to the regulation of market entry or exit by, the establishment of rates and services offered by, or rates of return earned by, wireless telecommunications providers. The Commission may use its authority in the oversight of marketing and billing practices, service quality, provision of accurate coverage maps, and resolution of disputes between wireless telecommunications providers and their subscribers, as described in the preceding sections of this Act.

(b) Commission-established service quality standards and publication of service quality information. The Commission shall establish standards for, and publish information regarding, the quality of service associated with wireless telecommunications providers operating in the state, including call center performance, blocked and dropped call rates, and the number of complaints received by the Commission for each wireless telecommunications

provider, per 1,000 subscribers, quarterly. This information shall be made available through the Commission's Web site, pamphlets, or other means suitable for mass distribution.

(c) Development of rules for verified coverage maps. The Commission shall monitor the deployment of wireless telecommunications networks and develop rules for the production of accurate coverage maps by wireless telecommunications providers in the state. The Commission shall develop signal strength thresholds, measured in decibels relative to one milliwatt (dBm), to be used by wireless telecommunications providers in producing the coverage maps specified in Section 3(a). The Commission may develop other service quality measurements, as appropriate, such as assessments of voice or data transmission quality. For the state home calling area associated with each calling plan, maps should provide a signal quality key and clearly identify areas where coverage gaps exist. The Commission shall develop signal strength thresholds that identify levels of quality of service in coverage areas that are appropriate for the population characteristics and terrain conditions in coverage areas of the state. Maps may also depict other measures of service quality, as appropriate, that shall be determined by the Commission. The verified coverage maps approved by the Commission should clearly convey information regarding the quality of service to the public and should have uniform characteristics across wireless telecommunications providers to promote service quality comparisons by consumers.

(d) Verification of the accuracy of coverage maps. The Commission shall develop methods to verify the accuracy of coverage maps submitted by wireless telecommunications providers to the Commission for approval to ensure their compliance with the rules established by the Commission under Section 11(c). The accuracy of these maps should be verified no less than annually. The Commission may, in the process of verification, use statistical sampling techniques, if it finds such sampling techniques are appropriate. The Commission shall make available to the public copies of verified accurate coverage maps for wireless telecommunications providers operating in the state.

(e) Incumbent Local Exchange Carrier services used to provide wireless E911 services. The Commission shall review the rates, terms, and conditions of service provided by incumbent Local Exchange Carriers that are used in the provision of wireless E911 services as they become available in the state. The Commission shall ensure that these incumbent Local Exchange Carrier rates are just, reasonable, nondiscriminatory, and consistent with timely provision of wireless E911 services.

(f) Commission rule making. The Commission shall initiate a rule-making process to develop rules needed to implement the provisions of this statute. The rule-making process should be completed 12 months after this Act is signed into law.

(g) Violations and penalties. Violations of the Commission's rules governing wireless telecommunications providers and penalties for violation are consistent with the provisions of the existing statute.

Commentary: Section 11

Section 11 of the Model Act defines the authority and responsibilities of the state public service commission with regard to wireless telecommunications providers. Depending on existing state laws, wireless telecommunications providers may or may not already be classified as public utilities. To the extent necessary to effect the provisions of the Model Act, wireless telecommunications providers are classified as public utilities. The Commission's authority with regard to wireless telecommunications providers so classified is explicitly restricted from overseeing market entry, establishment of rates and charges for products and services offered by wireless telecommunications providers, and rates of return earned by those companies. The scope of Commission authority is limited to oversight and enforcement of the provisions of the Model Act. As discussed earlier, these provisions are designed to promote informed choice and competitive forces that will allow market forces to successfully govern the rates and charges for products and services offered by wireless telecommunications providers.

The Commission is required to complete a rule-making process within one year after signing of the Act into law to develop rules that will enable it to carry out the provisions of the Act. The rule-making process will allow the Commission to formulate the necessary rules and procedures to guarantee that the framework established by the Act for enabling informed choice is carried out successfully.

Section 11 also describes the Commission's responsibilities with regard to the development and publication of information relating to service quality and the verification of the accuracy of coverage maps provided by wireless telecommunications providers. Wireless carriers typically maintain coverage maps for service quality and network engineering purposes. These maps may be detailed enough to provide "block-by-block" signal strength information. Wireless providers also frequently conduct "drive tests" to monitor network quality from a moving vehicle. Wireless telecommunications providers are required to submit coverage maps that will conform to the standards established in the rule-making process. The Commission will, as part of its rule-making process, determine the means for identifying service quality differences, which may be based on signal strength and may draw from network map information the carriers already produce for their own internal purposes. The Commission may also assess other measures if it finds other measures to be appropriate, such as evaluating the quality of voice conversations using the Mean Opinion Score (MOS) of voice quality standards published by the International Telecommunications Union.³² International Telecommunications Union P.800 Mean Opinion Score of voice quality is derived from an evaluation of various preselected voice samples over different transmission media. Alternatively, the Commission may decide to evaluate the data transmission capability of services associated with wireless e-mail and Internet services.

To provide consumers with an alternative and unbiased source of information regarding the coverage offered by wireless telecommunications providers, the Commission is required to make verified copies of coverage maps available to the public for wireless

³² Methods for subjective determination of transmission quality ITU-T Recommendation P.800. Available at: <http://www.itu.int/publibase/itu-t/ItutDetailsOnSubject.asp?serie=p&subjectid=2204>.

telecommunications providers operating in the state. The coverage maps should be of similar format across wireless telecommunications providers to allow for consistent comparison of coverage characteristics and service quality. State public utility commissions generally receive service territory maps from the firms under their jurisdiction, such as local telephone companies, electric companies, natural gas companies, and water companies. Such maps are necessary to identify service responsibility for existing customers as well as customers living in previously unserved areas (i.e., newly developed areas).

The importance of enhanced 911 services (E911) was emphasized when Congress passed the Wireless Communications and Public Safety Act of 1999 (Public Law 106-81, October 26, 1999). This Act established 911 as the nationwide emergency number and charged the FCC and states with implementation of enhanced 911 services for wireless communications services. The law establishes the FCC as a coordinator of efforts to ensure the timely deployment of E911 services, but does not give the FCC authority over state matters on this issue.

Under the Model Act, the Commission is required to monitor and review incumbent local exchange carrier prices for services associated with wireless E911 services. Timely deployment of E911 services is a critical aspect of public safety, given the increasing use of wireless telecommunications devices. To provide wireless E911 services, other telecommunications services must be acquired from local exchange carriers. The Model Act requires the Commission to monitor the deployment progress of wireless E911 services and to ensure that the services provided by incumbent local exchange carriers necessary for wireless E911 service are provided at rates, terms, and conditions that are just and reasonable and consistent with the timely deployment of wireless E911 services. Incumbent local exchange carriers should not be allowed to charge prices that will unreasonably delay deployment of E911 services.

Section 12: Exclusiveness of Chapter

Nothing in this chapter shall in any way abrogate, diminish, or weaken the remedies now existing in common law or by statute, but the provisions of this chapter are in addition to such remedies.



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